IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WP(C).No. 11772 of 2007(B)

PETITIONER:

P.J.LUKOSE, S/O.JOSEPH, AGED 55 YEARS,
PARAVARAKATH, NARIYAMPARA P.O.,
KATTAPPANA, IDUKKI DISTRICT.

BY ADV. SRI.JOICE GEORGE
SRI.LIJI.J.VADAKEDOM

RESPONDENTS:

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1. KATTAPPANA GRAMA PANCHAYAT,
REP.BY THE SECRETARY, KATTAPPANA P.O.,
IDUKKI DITRICT.

2. THE SECRETARY,
KATTAPPANA GRAMA PANCHAYAT,
KATTAPPANA P.O., IDUKKI DISTRICT.

3. GEORGE SCARIA,
PUTHIYAPARAMBIL HOUSE, EZHUKUMVAYAL P.O.,
KATTAPPANA, IDUKKI DISTRICT.

BY ADV. SRI.TOM JOSE
SRI.K.K.CHANDRAN PILLAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 TRUE COPY OF THE AUCTION NOTICE DTD. 26-02-2007 PUBLISHED BY R1 GRAMA PANCHAYAT KATTAPPANA

EXT.P2 TRUE COPY OF THE AUCTION DIARY IN RESPECT OF THE COMFORT STATION OF R1 AT KATTAPPANA BUS STATION.

EXT.P3 TRUE COPY OF THE REQUEST DTD. 07-03-2007 OF R3 SUBMITTED BEFORE R2

EXT.P4 TRUE COPY OF THE RESOLUTION NO.1(4) DTD. 15-3-07 OF THE KATTAPPANA GRAMA PANCHAYAT

THIRD RESPONDENT'S EXHIBITS

EXT.R3(A) TRUE COPY OF AGREEMENT ENTERED INTO BETWEEN THE PARTIES.

EXT.R3(B) TRUE COPY OF RECEIPT DTD. 27-03-2007 TOWARDS SECURITY FOR COMFORT STATION.

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

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W.P.(C).No. 11772 OF 2007

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Dated this the 26th day of July, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner participated in the auction held pursuant to Ext.P1 auction notice for settling the right to collect fee from the comfort station at the Kattappana bus station. Petitioner quoted Rs.6,06,000/-. According to him, the right was provisionally confirmed in his name and he was awaiting ratification. However, Ext.P4 decision was taken, by which the right is settled in favour of the third respondent. The third respondent admittedly was the successful auction purchaser in respect of the same right for the previous year. Apparently, he had put up a petition to settle the right in his favour for this year also on payment of 5% extra over the previous year's amount. Therefore, the committee decided to settle the right in favour of the third respondent for a sum of Rs. 6,35,040/-.

2. Petitioner challenges Ext.P4 and seeks a direction to

respondents 1 and 2 to grant and confirm the right/privilege to collect the fee from the comfort station at Kattappana bus station of the first respondent Panchayat. petitioner also seeks a direction to the first respondent to give him an opportunity to negotiate the amount for getting the right/privilege for collecting fee from the comfort station at Kattappana bus station of the first respondent.

3. Counter affidavits have been filed by respondents 1 , 2 and also the third respondent. In the counter affidavit filed by respondents 1 and 2 interalia stated that the first respondent had been given the right for the previous year for a sum of Rs.6,04,800/- and he had paid the entire amount as per the licence granted to him and there is no arrears also. Ext.P3 request was made by the third respondent seeking permission to continue for one more year stating that he is prepared to give 5% increase from the amount at which permission was given to him during the previous year. It is stated that this request was not before the Panchayat at the time Ext.P1 notification was issued by the Panchayat. It is stated that there are number of instances when licenses are issued and defaults are being

committed and the Panchayat was put to loss on account of non-payment of licence fee. Ext.P3 request was placed before the Panchayat committee without the deponent making any recommendation. The committee on 15/03/20007, after the auction, had considered the auction diary and also Ext.P3 request. The matter was discussed in detail and the members have pointed out the various instances where the licensees have left without paying licence fee. In that back ground, the request of the third respondent and offer to pay 5% more than the existing amount was considered by the committee. Kattappana is one of the busiest towns in the Idukki district. The comfort station which is now being managed by the Panchayat and at present run by the third respondent is the only place which can be used by hundreds of public everyday. It is being managed and maintained by the third respondent in a neat way also, it is stated.

4. Counter affidavit is filed by the third respondent. Therein it is interalia stated that the third respondent has entered into Ext.R3(a) agreement. A sum of Rs. 75,000/- was paid on 27/03/2007 under Ext.R3(b) receipt. There is also a case that

petitioner does not have a genuine grievance.

5. I heard learned counsel for the parties.

6. Learned counsel for the petitioner would submit that there is no authority with the Panchayat after issuing Ext.P1 notification to proceed to grant the right in favour of the third respondent by charging 5% more than the previous year. He would also submit that once notification is issued, the local authority is bound by the terms of the notification and as the petitioner was the highest bidder and it was provisionally confirmed in his name, there is no basis not to confirm the right in favour of the petitioner. He contended that the action of the Panchayat is arbitrary. He would also point out that the third respondent has in fact participated in the auction and after having participated in the auction and not having offered the amount at which it is subsequently accepted in Ext.P4, the offer of the third respondent should not be accepted.

7. Per contra, learned counsel for the Panchayat would reiterate the situation in which the right came to be settled in favour of the third respondent. He also pointed out that the contract was executed on 27/03/2007 and the right is being

exercised from 01/04/2007 and already nearly 4 months have elapsed. Counsel for the respondent would submit that Ext.R3(a) was executed on 27/03/2007. Learned counsel for the petitioner relies on the decision of the Division Bench in **Sankara Narayanan v. Director, Catering Service Railways and others** (2001(1) ILR426). That is a case where after issuing notification calling for quotations for running pantry car/mobile catering service from professional caterors belonging to scheduled caste, without issuing a public notice, the railway amended the terms of the notification and split the contract into four and awarded to respondents 4 to 7 therein so that none of the licensees was required to pay more than Rs.3 lakhs as licence fee or security deposit.

8. In fact, learned counsel for the Panchayat did not seriously attempt to defend the action in terms of pure legalism. He only pointed out the factual circumstances. He would immediately point out that the Panchayat will follow the principle of settling right by public auction from next year onwards. He would also point out the fact of passage of nearly 4 months from the execution of contract by the third respondent on 27/03/2007

and also the previous record of the third respondent. There is considerable merit in the contentions of the petitioner based on the principle that once notification is issued, the authority is bound by the terms of the notification. Of course, it is a case where the Panchayat has not confirmed the right in favour of the petitioner. There is only a provisional confirmation. I am not impressed by the method by which the right is settled in favour of the third respondent. But I would decline jurisdiction by reminding myself that Article 226 is discretionary and it is not in every case where illegality is committed, the court should interfere. I should not loose sight of the principle that the ultimate purport of Article 226 is to promote justice also. I note that the writ petition is filed on 03/04/2007. The contract was already executed on 27/03/2007 by the third respondent. The contract became operative with effect from 01/04/2007. Nearly 4 months have elapsed in the contract for 12 months. In other words, 8 months alone remain. In such circumstances, though the action of the Panchayat may not be justifiable strictly in accordance with law, having regard to all facts, I decline jurisdiction. But I record the submission of the learned counsel

for the first respondent that from the coming year onwards, the right will be settled strictly on the basis of the terms of the notification settling the auction. There will be a direction to the first respondent to disburse the sum of Rs. 10,000/- with interest @ 9% from the date of deposit till the date of payment to the petitioner through cheque within a period of one month from today. Subject to the above, the writ petition is dismissed.

(K.M.JOSEPH, JUDGE)

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